IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

CWP.No. 638 of 2006

Date of Decision : 25.6.2007

Dr. YSPU and another …Petitioners.

Versus:

State of H.P. & another …Respondents.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] No

For the petitioners: Mr. B. S. Attri, Advocate.

For respondent No.1.: Mr. J. K. Verma, Deputy Advocate General.

For respondent No.2 : None

Sanjay Karol, J (Oral).

This judgment is being dictated in open Court in presence of the learned counsel for the parties.

Petitioners have assailed the impugned award dated 17.1.2006 passed by the H. P. Industrial Tribunal-cum-Labour Court, Dharamshala, Distt. Kangra, in Reference No. 368 of 2002, titled as Nanak Chand vs. The Registrar Dr. Y.S. Parmar University and another. In terms thereof, respondent No.2-employee has been directed to be reinstated with half back wages and his seniority protected.

---

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

During the course of hearing, learned counsel for the petitioners restricted the challenge to the award of the back wages only.

He has relied upon the judgment of the Apex Court in ***General Manager, Haryana Roadways*** vs. ***Rudhan Singh*** (2005 Vol. 5 Supreme Court Cases 591) and ***Manager (now Regional Director) R.B.I***. vs. ***Gopinath Sharma & Anr***. (AIR 2006 SC 2614), to contend that onus was heavily on the employee to show that he was not gainfully employed.

The record of the case was summoned on 18th June, 2007 and perused. The employee was engaged as a daily wage Beldar. According to the learned counsel for the petitioners, respondent No.2 was employed as casual worker to meet the exigencies of urgent work of seasonal in nature.

In fact while reinstating the petitioner (respondent No.2), the Tribunal has observed as under:

> "Nevertheless even without such an evidence on record when the claimant's nature of avocation was such that it cannot be presumed that he did not remain not gainfully employed and hence, it is deemed fit in the wider interest of justice that the claimant be directed to be reinstated with half back wages with the further direction that his seniority from the period of his disengagement till his reinstatement shall remain intact."

Yet the Tribunal proceeded to award half back wages to the employee. Perusal of the award shows that no reasons have been assigned whatsoever in so awarding inspite of it having observed that there is no evidence on record to show that the employee was gainfully employed.

I have seen the record and also examined the statements of the witnesses, from which, it is clear that the relief qua back wages, infact, was not even pursued and pressed by the employee. Admittedly, the employee was working as casual labourer and, therefore, since the employee has not worked, in my view, he would not be entitled for any back wages.

In view of the aforesaid, the writ petition is partly allowed and the award dated 17.1.2006, is modified to the extent that respondent No.2 shall not be entitled for any back wages in terms of the award. Learned counsel for the petitioners has made a statement at the bar that respondent No.2 has been reinstated w.e.f. 20th May, 2006. The writ petition is accordingly disposed of.

CMP 1056/2006

In view of the disposal of the main matter, this application also stands disposed of.

(Sanjay Karol),
Judge.

June 25, 2007.
(rana)